

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Andre Wright,

Petitioner

21-VH-0264-AG-150

5509126LL9244

July 29, 2022

DECISION AND ORDER

On September 15, 2021, Andre Wright (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on October 20, 2021, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On December 8, 2021 the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim or in compliance with the Orders issued by this Court. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

On May 27, 1992, Petitioner executed and delivered a Retail Installment Contract (“Note”) in the amount of \$15,674.20 to NC MOB HMS DBA HME TOWN, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement* (“*Sec’y. Stat.*”) ¶2, filed December 8, 2021, Ex. B, Note. The Note was subsequently assigned by Harry Reed Homes to Logan-Laws Financial Corporation (“Logan-Laws”). *Id.*

Logan-Laws was defaulted as an issuer of Office of Issuer and Portfolio Management (“OIPM”) loans due to its failure to comply with the Government National Mortgage Association’s (“Ginnie Mae”) MBS program requirements. *Sec’y. Stat.*, ¶4, Ex. A, *Declaration of Rene Mondonedo* (*Mondonedo’s Declaration*)¹ at ¶ 4.

Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between First Beneficial and Ginnie Mae. *Id.* at 5. As Ginnie Mae (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec’y. Stat.*, ¶ 5, Ex. A, *Mondonedo’s Declaration*, at ¶ 5.

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$ 3,896.45 as the unpaid principal balance;
- (b) \$0.00 as the unpaid interest on the principal balance through July 14, 2021;
- (c) \$0.00 in administrative fees;
- (d) 2% interest on said principal balance until paid.

Sec’y. Stat., ¶ 7, Ex. A, *Mondonedo’s Declaration*, at ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) dated August 3, 2021 was sent to Petitioner. *Sec’y. Stat.*, ¶ 8, Ex. A, *Mondonedo’s Declaration*, at ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable

¹ Rene Mondonedo is Director of Mortgage Backed Securities Monitoring Division for the U.S. Housing and Urban Development.

terms. Id. Petitioner failed to enter into a written repayment agreement in response to the Notice. *Sec'y. Stat.*, ¶ 9, Ex. B, *Mondonedo's Declaration*, at ¶ 8.

Ginnie Mae proposes an administrative wage garnishment amount of 15% of the Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 10.

Based on the foregoing, the Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair. Id.

DISCUSSION

Petitioner contends, in his Hearing Request, that he was unaware of the existence of the subject debt. Despite Petitioner being notified that this debt remained outstanding, Petitioner failed to present evidence in support of his position that he was unaware of the debt and that the debt did not exist. As a result, the Court is unable to assess the credibility of Petitioner's position in the absence of evidence to substantiate Petitioner's claim.

Upon further review of the record, the Court finds the Secretary's position credible and persuasive. The subject debt is past due and enforceable against Petitioner. Case law precedent has established that "[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). Herein, the Note is considered a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).

The Note in this case clearly states that certain events or conditions can trigger a secured party's right to cure a default, one of which is the borrower's default on payment of any installment of the total number of installments due on the Note. *Sec'y. Stat.*, Ex. B ¶ 4(a). In this case, when Petitioner failed to pay the Note as agreed, the Note immediately became due and payable, in full. *Sec'y. Stat.*, Ex. B ¶ 5. Without evidence from Petitioner to prove otherwise, Petitioner's contractual obligation to pay the subject debt remains intact. Therefore the Court finds that Petitioner is responsible for, and should pay, the subject debt in full.

As a final point, Rule 26.4 (d) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (Emphasis added).

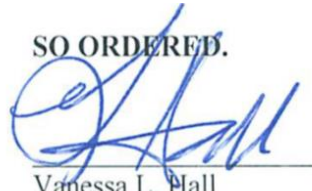
Accordingly, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the Order issued on October 20, 2021 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.